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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of 1993 Annual Access Tariff Filings GSF Order Compliance Filings 1994 Annual Access Tariff Filings 1995 Annual Access Tariff Filings 1996 Annual Access Tariff Filings	CC Docket No. 93-193, Phase I, Part 2 CC Docket No. 94-65

REPLY COMMENTS OF PACIFIC BELL

THE APPLICATION FOR REVIEW IS TIMELY

AT&T argues that the Application for Review is an untimely petition for reconsideration of the April 17, 1997 order. In this new argument, which AT&T did not raise in the Bureau proceedings below, AT&T characterizes the issue as a challenge to the "Commission-specified procedures for calculating refunds under the April 17 order."[1] This is untrue. The April 17 order does not *specify* any procedures for performing this calculation. Rather, it says in paragraph 97 for LECs to "correct their PCIs and other pricing limits on a going-forward basis so that those PCIs are what would have been in place had they been calculated consistent with the Commission rules and decisions. Recalculations are to be made for the price cap index in

[1] AT&T p. 3.

each basket..."[2] Pacific Bell correctly followed the Commission's instructions to reallocate the sharing obligation to all baskets, beginning with the 1994 Annual Filing, so that the resulting revised PCIs in effect as of June 30, 1997 "are what would have been in place had they been calculated consistent with the Commissions [sic] rules and decisions."[3] The Commission went on in the Order to require refunds to be calculated by a one time exogenous cost adjustment.[4]

Nothing in the April 17 order precludes the methodology used by Pacific in performing the refund calculation. Thus, no petition for reconsideration of that order was necessary. We do not contest the findings as to liability contained in the April 17 order and therefore no PFR was submitted to the April 17 order.

PACIFIC'S METHODOLOGY FOR CALCULATING THE EXOGENOUS ADJUSTMENTS IS THE ONLY METHOD WHICH DOES NOT RUN AFOUL OF THE COMMISSION'S PRESCRIBED SHARING RULES.

Both AT&T and MCI claim that Pacific made a business decision to refrain from allocating sharing to EUCL revenues, and therefore Pacific should not be able to take the offsetting upward adjustments made necessary by the Commission's April 17 order.[5] However Pacific's decision was based on the Commission's rule that exogenous cost adjustments should be apportioned on a cost causative basis."[6] Cost causative was never defined by the Commission. And, as the Commission itself determined in 1993, there was "sufficient uncertainty" as to whether the exclusion of end user revenues from the common line basket for sharing purposes was proper. "The Commission through its regulatory power cannot, in effect,

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[2] Order ¶97.
[3] Order ¶97.
[4] Order ¶104-106.
[5] AT&T p.7.
[6] 47 CFR 61.45(d)(4).

punish a member of the regulated class for reasonably interpreting Commission rules."[7] Pacific cannot now be penalized for interpreting uncertain and undefined Commission rules in a reasonable way. Therefore, the claim that a conscious business decision was made for which Pacific bears the risk is untenable.

As Pacific pointed out in its AFR, if it is not permitted to take offsetting exogenous adjustments in its traffic sensitive and trunking baskets, then its sharing liability will have increased to 64% from the prescribed amount of 50%. The amount of sharing has never been at issue either in proceedings below, or in the instant case. MCI attempts to refute this argument by arguing that section 204 permits the Commission to issue refunds reflecting overcharges. However, unlike a typical carrier-controlled filed rate matter, the FCC has prescribed the sharing amount of 50%. It cannot now depart from that prescription.

MCI argues that requiring this refund in solely the common line basket does not increase our sharing liability because this refund should not be considering sharing dollars. MCI evidently believes that if it calls the sharing reallocation a rate refund, it can convert the sharing liability to a generic refund. However, form should not be put over substance. For each year in question, Pacific shared the appropriate number of dollars with its customers. Requiring a one-sided refund now equates to ordering us to increase that sharing amount, no matter what MCI or the Bureau decides to call it.

Next, MCI argues that because our rates were within a zone of reasonableness under price caps, we are not entitled to the upward exogenous true up.[8] MCI's argument begs the

[7] Satellite Broadcasting Company v. FCC, 824 F.2d 1, 4 (D.C. Cir. 1987).

[8] In the course of this argument, MCI states that our "common line basket API was above the true common line PCI for much of the period under consideration." MCI at 5. As MCI should be aware, the common line basket has no API (47 C.F.R. §61.46(d)).

question. The issue is not whether our rates were within the appropriate limits under price caps. The issue is whether those limits should have been calculated differently so that the correct rate caps were in place; not whether rates were within the "zone of reasonableness." As we have shown, if we are not permitted to adjust the rate caps upward, the price cap rules have been violated.

MCI goes on to argue on policy grounds that misallocating sharing permits the type of cross subsidy the price cap rules were intended to prevent.[9] However, the whole reason Pacific decided to exclude end user revenues from the sharing allocation was because we were trying to prevent cross subsidy. Since EUCL revenue is not affected by sharing, Pacific made the determination not to include these revenues in the cost causative allocation. Including EUCL revenues in the sharing allocation has the effect of causing purchasers of services from the other baskets to subsidize common line basket purchasers. Because Pacific was mindful of this concern, we excluded the revenue. It is amusing that MCI has pointed to the reverse problem as a justification for why we should now be penalized.

MCI's theory also is that certain customers may be advantaged or disadvantaged by the allocation scheme we chose to use since some customers buy primarily from one basket, and others utilize services from other baskets. However, the Commission rules do not require that sharing benefit each carrier equally. We do not distribute sharing dollars carrier by carrier so that each is assured its 50%. Rather, the Commission's rules require sharing based on total interstate revenues.[10] So, the fact that certain customers may benefit disproportionately from sharing is irrelevant.

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[9] MCI p.14.
[10] 7 FCC Rcd 4731.

AT&T and MCI claim that the methodology proposed by Pacific to reallocate sharing will result in a windfall for Pacific. What neither of these parties admit, though, is that if they prevail, they are the recipients of lower than proper rates to effectuate the refund. The windfall goes to them. Had the Commission resolved this issue in a timely fashion there would have been no revenue impact either for Pacific Bell or its IXC customers.

CONCLUSION

Thus, AT&T and MCI's concerns are unfounded. The only equitable way to correct the misallocation, and the only way permitted by the Commission's rules, is to adjust all baskets so that the sharing misallocation can be corrected. Otherwise, Pacific would be forced to share more than the required amounts during the years in question.

Respectfully submitted,

PACIFIC BELL

ROBERT M. LYNCH
DURWARD D. DUPRE

One Bell Center, Room 3524
St. Louis, MO 63101
(314) 235-2513

NANCY C. WOOLF

140 New Montgomery Street, Room 1522A
San Francisco, California 94105

(415) 542-7657

Its Attorneys

Date: September 23, 1997

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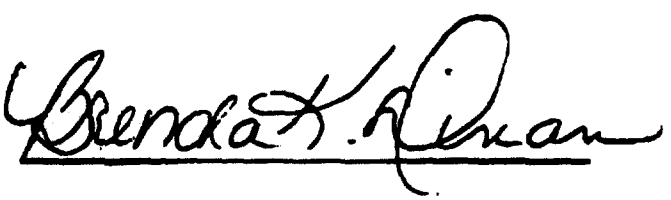
CERTIFICATE OF SERVICE

I, Brenda K. Dinan, hereby certify that the Reply Comments of Pacific Bell and on CC Docket 93-193, has been served September 23, 1997, to the Parties of Record.



Brenda K. Dinan

September 23, 1997

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*Regina M. Keeney
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*James D. Schlichting
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*A. Richard Metzger, Jr.
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*Judith A. Nitsche
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*Suzan B. Friedman
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

Michael S. Pabian
Ameritech Operating Companies
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Edward Shakin
Bell Atlantic Telephone Companies
8th Floor
1320 North Court House Road
Arlington, VA 22201

M. Robert Sutherland
BellSouth Telecommunications, Inc.
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Ronald W. Barby
Centel Corporation
8725 Higgins Road
Chicago, IL 60631

Richard McKenna
GTE Service Corporation
HQE03J36
POB 152092
Irving, TX 71015-2092

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Frank Hilsabeck
Lincoln Telecommunications Company
1440 M Street
POB 81309
Lincoln, NE 68501-1309

Nancy C. Woolf
Pacific Telesis Group
Room 1529
140 New Montgomery Street
San Francisco, CA 94105

Campbell L. Ayling
NYNEX Telephone Companies
1111 Westchester Avenue
White Plains, NY 10604

Jeffrey Blumenfeld
Blumenfeld & Cohen
Suite 700
1615 M Street, N.W.
Washington, DC 20036

Josephine S. Trubek
Michael J. Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Rochelle D. Jones
Eugene J. Baldrate
Southern New England Telephone Company
227 Church Street
New Haven, CT 06510-1806

Mary McDermott
Linda Kent
Charles D. Cosson
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005-2136

Robert M. Lynch
Durward D. Dupre
Thomas A. Pajda
Southwestern Bell Telephone Company
Room 3520
One Bell Center
St. Louis, MO 63101

Jay C. Keithley
United and Central Telephone Companies
Suite 1110
1850 M Street, N.W.
Washington, DC 20036

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T Corp.
Room 3244J1
295 North Maple Avenue
Basking Ridge, NJ 07920

Loretta J. Garcia
Donald J. Elardo
Mary J. Sisak
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Leonard Robert Raish
Fletcher, Heald & Hildreth
11th Floor
1300 North 17th Street
Rosslyn, VA 22209

Allnet Communication Services, Inc.
Suite 500
1990 M Street, N.W.
Washington, DC 20036

Charles C. Hunter
Hunter & Mow, PC
Suite 701
1620 I Street, N.W.
Washington, DC 20006

James A. Crary
Anchorage Telephone Utility
600 Telephone Avenue
Anchorage, AK 99503-6091

Robert Doyle
Roseville Telephone Company
POB 969
Roseville, CA 95661

Ellyn Elise Crutcher
Larry L. Cooper
Illinois Consolidated Telephone Company
121 South 17th Street
Matton, IL 61938

Chillicothe Telephone Company
68 East Main Street
POB 480
Chillicothe, OH 45601-0647

Paul J. Berman
Ellen K. Snyder
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044

Glenn S. Rabin
ALLTEL Service Corporation
Suite 220
655 15th Street, N.W.
Washington, DC 20005

Century Telephone Company
POD 340
Beaux Bridge, LA 70517

Thomas E. Taylor
Cincinnati Bell Telephone Company
6th Floor
201 East Fourth Street
Cincinnati, OH 45202

Richard A. Askoff
National Exchange Carrier Association
100 South Jefferson Road
Whippany, NJ 07981

Citizens Telephone Company
1905 Walnut
POB 737
Higginsville, MO 64037

Coastal Telephone Company
P.O. Drawer 340
Breaux Bridge, LA 70517

The Concord Telephone Company
POB 227
Concord, NC 28026-0227

Dunkirk and Fredonia Telephone Company
40 Temple Street
POB 209
Fredonia, NY 14063

Lufkin-Conroe Telephone Exchange
POB 1568
Conroe, TX 77305

Merrimack County Telephone Company
3 Kearsage Avenue
Contoocook, NH 03229

Ogden Telephone Company
POB 457
Ogden, IA 50212

Rhinelander Telephone Company
53 North Stevens Street
Rhinelander, WI 54501

Bay Springs Telephone Company
POB 409
Bay Springs, MS 39422

Warwick Communications Inc.
5506 Detroit Avenue
Cleveland, OH 44102

West River Cooperative Telephone Company
POB 39
Bison, SD 57620

Wilkes Telephone Membership Corporation
POB 740
Millers Creek, NC 28651

Wood County Telephone Company
440 East Grand Avenue
Wisconsin Rapids, WI 54494

Robert F. Adkisson
GVNW, Inc./Management
2270 Law Montana Way
Colorado Springs, CO 80918

James S. Blaszak AD HOC TUC
Levine, Blaszak, Block and Boothby
Suite 500
1300 Connecticut Avenue, N.W.
Washington, DC 20036-1703

Granite State Telephone
POB 87
South Weare, NH 03281

Stephen G. Kraskin STCOWI
Kraskin & Lesse
Suite 520
2120 L Street, N.W.
Washington, DC 20037

Thomas J. Moorman
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

Benjamin H. Dickens, Jr. UTELCO
Gerard J. Duffy
Brian D. Robinson
Blooston, Mordkofsky, Jackson & Dickens
Suite 300
2120 L Street, N.W.
Washington, DC 20037

(CC94157B.DK/lh)
(For CC93193)
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Michael R. Wack VITC
John W. Hunter
Reed, Smith, Shaw & McClay
Suite 1100-East Tower
1301 K Street, N.W.
Washington, DC 20005-3317